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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ROCK & DIRT ENVIRONMENTAL,
INC., an Alaska corporation,

Plaintiff,

v.

TEXAS TIMBERJACK, INC., a Texas
corporation,

Defendant.

NO.

COMPLAINT FOR DAMAGES

Plaintiff Rock & Dirt Environmental, Inc. ("R&D Environmental"), for its
Complaint against Defendant Texas Timberjack, Inc. ("Texas Timberjack"), alleges as
follows:

I. PARTIES

1.1 At all times herein mention, Plaintiff R&D Environmental was, and is
now, a corporation organized under the laws of the state of Alaska. At all relevant
times, Plaintiff R&D Environmental did business in Fairbanks, Alaska.

1.2 Defendant Texas Timberjack is an Texas corporation that does business
in the state of Alaska.

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II. JURISDICTION AND VENUE

2.1 Personal jurisdiction is proper over Defendant Texas Timberjack pursuant to Federal Rule of Civil Procedure 4, and Alaska's Long-Arm Statute § 09.05.015 as this action relates to goods received by Plaintiff and sold by Defendant for use in the state of Alaska and the Defendant is engaged in substantial activities in the state of Alaska.

2.2 This Court has jurisdiction over the subject matter of this dispute between the parties pursuant to 28 U.S.C. § 1332 as there is complete diversity and the amount in controversy requirement is met. Venue is proper in this Judicial District, pursuant to 28 U.S.C. §1391, because the performance took place in this District.

2.3 Pursuant to Local Rule 3.3, this action should be properly assigned to the Fairbanks division, because the acts or omissions which give rise to R&D Environmental claims and occurred in the Fairbanks district.

III. FACTS

3.1 R&D Environmental is a construction company licensed in the state of Alaska. Texas Timberjack is a Texas corporation that routinely sells logging equipment.

3.2 R&D Environmental has routinely purchased equipment from Texas Timberjack for use on R&D Environmental projects in the state of Alaska. Texas Timberjack has sold equipment to R&D Environmental with knowledge that the equipment would be used in Alaska.

3.3 On or about March 2010, R&D Environmental contacted Texas Timberjack to order a piece of logging equipment. R&D Environmental told Texas Timberjack that the equipment must be in good working order to be utilized by R&D

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1 Environmental on two upcoming logging projects – an 80 acre clearing project for the
2 U.S. Army Corp of Engineers and a 20 acre project at Fort Wainright. R&D
3 Environmental’s representatives specifically informed Texas Timberjack that the
4 equipment was needed for these two projects, it must be in good working order, and the
5 procurement was time sensitive because the projects were commencing soon.

6 3.4 Representatives of Texas Timberjack told the representatives of R&D
7 Environmental that Texas Timberjack would be able to procure a piece of equipment to
8 meet R&D Environmental’s needs.

9 3.5 Texas Timberjack representatives later told R&D Environmental that the
10 company had procured a used piece of equipment to meet R&D Environmental’s
11 needs. The equipment offered by Texas Timberjack was a Timberjack Model 1270C
12 (hereinafter the “Processor”).

13 3.6 Texas Timberjack’s representative told R&D Environmental that no
14 major repairs were necessary to the Processor and that the Processor was in good
15 working order. Texas Timberjack’s representative stated that there were some minor
16 oil leaks in the Processor and cosmetic repairs might be necessary to the windshield
17 and sheet metal on the Processor.

18 3.7 Texas Timberjack’s representative stated that the oil leaks and cosmetic
19 issues could be repaired at Texas Timberjack’s shop and the Processor would be
20 available in time for R&D Environmental’s upcoming projects. Based on these
21 assurances, that the oil leaks could be repaired and that the Processor would be fully
22 operable, R&D Environmental agreed to the purchase the Processor.

23 3.8 R&D Environmental purchased the Processor for eighty two thousand
24 six hundred fifty seven dollars and sixty nine cents (\$82,657.69). Texas Timberjack

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1 also charged R&D Environmental an additional six thousand dollars (\$6,000.00), over
2 and above the original purchase price, to ostensibly repair the minor oil leaks and
3 cosmetic issues.

4 3.9 When the Processor arrived at R&D Environmental's location in
5 Fairbanks, Alaska, R&D Environmental immediately discovered that the Processor was
6 not in the condition that it had been represented by Texas Timberjack. The Processor
7 was inoperable in its current condition and required extensive and costly repairs.

8 3.10 Representatives of R&D Environmental contacted Texas Timberjack
9 regarding the condition of the Processor. Texas Timberjack's representative directed
10 R&D Environmental to take the Processor to two repair shops in Alaska that he had
11 located. R&D Environmental took the Processor to the two shops recommended by
12 Texas Timberjack and the mechanics at the shops either refused to work on the
13 Processor because it was inoperable or were unable to perform any work on it for at
14 least three weeks.

15 3.11 R&D Environmental was unable to wait three weeks for the Processor to
16 be repaired because the Processor was needed for two jobs that had already started.

17 3.12 R&D Environmental seasonably rejected the Processor.

18 3.13. Texas Timberjack has not replaced the Processor or refunded the
19 purchase price paid for the Processor.

20 3.14 R&D Environmental incurred damages as a consequence of Texas
21 Timberjack's breach in the form of lost profits, lost efficiencies, and additional costs on
22 the two projects that it performed without the use of the Processor. R&D
23 Environmental also incurred costs for shipping the Processor plus interest.

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1 **IV. CAUSE OF ACTION: BREACH OF CONTRACT**

2 4.1 R&D Environmental repeats and realleges paragraphs 1.1 through 3.14
3 of its Complaint as if fully stated herein.

4 4.2 Texas Timberjack has failed to perform in accordance with its
5 agreement with R&D Environmental. The Processor sold by Texas Timberjack was
6 not in good working order as represented by Texas Timberjack.

7 4.3 Despite R&D Environmental's repeated demands, Texas Timberjack has
8 failed to refund the purchase price for the machine.

9 4.4 Because R&D Environmental was unable to use the equipment on the
10 two jobs that it had planned to perform with the Processor, R&D Environmental
11 incurred additional costs and loss profits.

12 4.5 R&D Environmental is entitled to damages for the refund of its purchase
13 price, its shipping cost, interest paid, and the lost profits and inefficiencies on
14 performed work. R&D Environmental's damages are greater than \$75,000.00, the
15 exact amount to be proven at time of trial.

16 **V. CAUSE OF ACTION: BREACH OF WARRANTY**

17 5.1 R&D Environmental repeats and realleges paragraphs 1.1 through 4.5 of
18 its Complaint as if fully stated herein.

19 5.2 The contract between R&D Environmental and Texas Timberjack is a
20 contract for the sale of goods, and is govern by Alaska's Uniform Commercial Code,
21 A.S. 45.02 *et seq.*

22 5.3 Texas Timberjack warranted that the Processor would be merchantable,
23 would pass without objection in the trade, would be fit for ordinary uses, and would be
24 fit for a particular purpose.

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1 5.4 Texas Timberjack breached its express and implied warranties.

2 5.5 R&D Environmental is entitled recover damages against Texas
3 Timberjack as allowed under A.S. 45.02 esq., including consequential damages. R&D
4 Environmental's damages are greater than \$75,000.00, the exact amount to be proven
5 at time of trial:

6 **VI. CAUSE OF ACTION: DELIVERY OF NONCONFORMING GOODS**

7 6.1 R&D Environmental repeats and realleges paragraphs 1.1 through 5.5 of
8 its Complaint as if fully stated herein.

9 6.2 The agreement between R&D Environmental and Texas Timberjack for
10 the Processor is a contract for the sale of goods, and is governed by Alaska's Uniform
11 Commercial Code, A.S. 45.02 *et seq.*

12 6.3 Texas Timberjack delivered nonconforming goods to R&D
13 Environmental.

14 6.4 R&D Environmental seasonably rejected the Processor.

15 6.5 Despite repeated demands, Texas Timberjack also failed to cure the
16 nonconformity within a reasonable time.

17 6.6 Because Texas Timberjack delivered nonconforming goods and has
18 failed to properly cure, R&D Environmental is entitled to revoke acceptance to the
19 extent that it is determined that R&D Environmental accepted the Processor (which is
20 specifically denied), under A.S. § 45.02 *et seq.*

21 6.7 R&D Environmental is entitled to recover damages allowed under A.S.
22 45.02 *et seq.*, including consequential damages. R&D Environmental's damages are
23 greater than \$75,000.00, the exact amount to be proven at time of trial.

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VII. RELIEF REQUESTED

On the basis for the foregoing allegations, R&D Environmental demands the following relief:

1. Awarding R&D Environmental damages caused by Texas Timberjack's breach of contract, breach of implied and express warranties and failure to provide conforming goods. R&D Environmental's total damages exceed \$75,000.00, the exact amount to be proven at time of trial.

2. Awarding R&D Environmental its reasonable attorneys' fees, costs and expenses.

3. Awarding R&D Environmental any additional legal or equitable relief which the Court finds just and equitable.

DATED: This 19 day of August, 2011.

AHLERS & CRESSMAN PLLC

By: 

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